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IPRA CRITIQUE

A CRITIQUE OF THE INDIGENOUS PEOPLES RIGHTS ACT (R.A. 8371) AND ITS IMPLEMENTING RULES AND REGULATIONS

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August 1998

FOREWORD

In preparing this Critique, the writing staff was principally guided by the principles of the national-democratic movement, especially as it applies to indigenous peoples' issues, and by the views and experiences of CPA's local organizations in the various provinces. We also considered the views of other organizations and the opinions of knowledgeable lawyers.

It does not take one to be a national-democratic activist in order to realize the validity of our critique of IPRA. We do encourage the reader, however, to study and internalize the national-democratic analysis and program so as to better understand this paper's contents and approach.

While this Critique was made mainly from the viewpoint of the Cordillera's indigenous peoples and basic sectors, we offer it to other indigenous peoples and sectoral organizations and alliances nationwide. We thereby hope to contribute in the nationwide effort to unite the entire Filipino people in criticizing IPRA and in truly fighting for indigenous peoples' rights.

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Baguio City
August 31, 1998

I. FRAMEWORK OF ANALYSIS

OUR BASIC VIEW ABOUT PRESENT LAWS

Basic problems of Philippine society

The nature of Philippine society at present is semi-colonial and semi-feudal. The feudal, agrarian, and backward economy of the country is under the control of foreign monopoly capital. The economy, politics, culture, military affairs and foreign relations of the Philippines as a nation is principally controlled and directed by U.S. imperialism.

Within the semi-feudal and semi-colonial system, the peasants, workers, petty bourgeoisie, national bourgeoisie and other democratic sectors, who compose the majority of the people, continue to suffer the basic problems of imperialism, feudalism and bureaucrat capitalism. Only the imperialists and the local ruling classes benefit from this social setup.

On top of these main problems, the distinct problem of national oppression by the imperialists and local ruling classes continues to beset our indigenous peoples in the Cordillera, in Mindanao, and elsewhere. National oppression, in the Philippine context, means the dominant social forces (i.e., the ruling classes and their coercive state) invoking the interests of a "national majority" to oppress indigenous peoples as national minorities.

In the past periods of our history, this oppression took the extreme form of outright conquest, plunder, and genocide. It is still expressed in the following specific problems faced by our indigenous peoples: denial of ancestral lands and resources; socio-economic impositions; denial of democratic

self-rule; ethnocide whether due to misdevelopment, militarization, or destruction of indigenous cultures; and continuing racist or chauvinist discrimination.

The nature of the reactionary state, its laws and programs

Under the present setup, the state – represented by the government of the Republic of the Philippines – remains under the tight control of big landlord-comprador groups and bureaucrats, and enjoys imperialist support. The state's overall authority, basic policies, and main body of laws, which it imposes on the entire population, all reflect the general will and long-term interests of the exploiter classes. It thereby serves as the main instrument for advancing their interests, for preserving their power and wealth, and for resisting basic changes as demanded by the masses of people.

Whenever the masses move for fundamental changes in society, the state immediately reacts to distract and suppress them. On one hand, it uses a whole range of methods of deception – including elections and other formalistic processes – to make the masses believe that the government exists and works in their behalf. On the other hand, it also wields a full arsenal of weapons – the military, police, courts, and jails – to suppress the awakened people's efforts to resist and reject its policies and its very rule.

Whenever the masses realize the built-in bias of government laws against them, they learn to fight for their interests and demands beyond what the laws allow. While the state's basic reaction is to assert its laws and overall authority, at some point it may decide to adopt major revisions to its laws and policies. It "changes the rules of the game" so as to refine its deceptive tricks while strengthening the legal basis of its repressive measures.

For example, the Labor Code was the state's legislative response to the resurgent workers' movement of the late 1960's and early 1970's. The Comprehensive Agrarian Reform Law (CARL) is just the most recent attempt by the state to silence the peasantry's agrarian demands. Not surprisingly, the same state now comes up with the Indigenous Peoples' Rights Act (IPRA) as another tokenist law, this time directed at the indigenous peoples.

Also, the present trends of globalization and deep economic crisis have been pushing the imperialists and local ruling classes to adopt more drastic policies of liberalization, privatization, and deregulation to advance their interests. The Philippine state has frenziedly come out with rehashed comprehensive programs (such as the US-Ramos regime's "Philippines 2000", MTDP and Social Reform Agenda) and revised comprehensive laws and codes that reflect its updated priorities. IPRA is part of this overall effort.

HOW AND WHY IPRA WAS ENACTED

Long before IPRA, the national-democratic movement had already formulated its own program for indigenous peoples and national minorities. This program, based on extensive study and grassroots consultations, fought for the full recognition of our right to self-determination and ancestral land rights. An expanding range of indigenous peoples and their organizations, here in the Cordillera, in Mindanao and elsewhere, have embraced this program and continue to enrich it in actual struggles for specific demands.

The demands for the right to self-determination and ancestral land have become truly popular and concrete issues of the masses, and mass struggles by indigenous peoples have won victories, particularly against exploitative and destructive projects. The just and legitimate demands of indigenous

peoples could no longer be denied by mere propaganda nor suppressed by military action. It was time for the state to try other tactics.

Under the US-Marcos dictatorship

The US-Marcos dictatorship (1972-1986) answered the indigenous peoples' demands and struggles mostly with fascist repression and military action. It stuck to its hardline policies especially to facilitate the entry and operation of its exploitative programs and projects, such as the Chico dam and Cellophil projects.

On the other hand, the Marcos regime also tried some deceptive moves in order to distract the increasingly militant indigenous peoples' struggles. On the Moro front, it used the Tripoli peace talks and set up a fake autonomous region to lure in the MNLF. It also issued PD 410 (Ancestral Land Decree) and several other laws, in a half-hearted and ineffective attempt to assuage the indigenous peoples' growing loss of ancestral lands.

Under the US-Aquino regime

The succeeding US-Aquino regime (1986-1992) shifted to a more deceptive approach. It continued to militarize the areas of indigenous peoples and repress their organizations, but it also created a grand illusion of sweeping reforms. It revived the GRP-MNLF talks in Mindanao, conducted farcical "talks" with the renegade CPLA in the Cordillera, and pushed forward the bogus autonomy schemes in both areas. By so doing, it hoped to distract the indigenous peoples from working out the real long-term solutions to their problems.

The Aquino regime tried to form a more credible policy on ancestral land rights and related indigenous peoples' concerns, but the efforts were half-baked, reflecting deep

policy disunities within the ruling clique. An Ancestral Land Bill was filed in 1990 but did not pass. In 1991, the DENR came up with Special Order 31 and 31-A on ancestral land recognition, but these were lukewarmly received by other government agencies and by the indigenous peoples.

The DENR AO 42 on Industrial Forest Plantation Agreement (IFMA) was issued in 1991. The People's Small-scale Mining Act was signed into law in 1991, and the NIPAS Law in 1992. All three laws seemed to recognize our land rights, but were actually sophisticated traps that lured us to participate in the near-confiscatory appropriation by the state and private corporations of our own ancestral resources.

Under the US-Ramos regime

The US-Ramos regime (1992-1998) appeared more aggressive in pushing the scheme to coopt indigenous peoples' issues, but the masses remained wary of its traps.

On the Moro front, the regime was able to obtain the surrender of the MNLF-Misuari group, rewarding its leaders with positions in the SPCPD and a prettified ARMM. As the bankruptcy of Misuari-style reformism became obvious, the Moro and Lumad masses began looking for more radical alternatives elsewhere. In the Cordillera, the Ramos regime suffered yet another failed attempt in early 1998 to have us agree to bogus autonomy. This, plus the abject failure of the 10-year CAR, shows the bankruptcy and opportunism of Cordillera's traditional political leaders.

Meanwhile, a new trend was emerging among international institutions such as the World Bank starting in the late 1980's. In an operational directive (OD 4.20), the WB ostensibly recognized the validity of indigenous peoples' concerns regarding WB-funded projects. The Asian Development Bank

(ADB), U.S. Agency for International Development (USAID), and other imperialist institutions subsequently echoed the new WB policy.

Essentially, this policy reflects the realization by imperialists that their corporate operations had to adopt more definite rules for operating deeply in indigenous peoples' regions. They realized that still vast forests, mineral lands, hydro-thermal energy sources, croplands, bio-genetic pools and other resources of these peoples must be identified, classified, mapped, and delineated in some systematic and official manner, so as to legally facilitate their exploration and development. And what better way to do this, but to inveigle the acquiescence of the indigenous peoples themselves?

Thus, it was these policies and funding by imperialist institutions that impelled the Ramos regime to draw up more definite measures on identifying ancestral land claims. In line with this, a USAID-funded program resulted in DENR Administrative Order No. 2 (DAO 2) in 1993. In 1995, the regime got its Office of the Presidential Assistant for the Peace Process and some NGOs (Panlipi, ECIP, and GZO) to conduct a few consultations and come up with a draft IPRA. Submitted to the Senate and Lower House, the original draft itself got mangled – prompting some of the original NGO proponents to disown the legislative bills.

In the meantime, while IPRA was still on the drawing boards and DAO 2 was yet being tried out in practice, Ramos signed the Philippine Mining Act in 1995 and began approving FTAA's and MPSA's left and right. This underscored the fact that big business interests took precedence over indigenous land rights.

The final IPRA draft was passed by Congress on October 22, 1997 and signed by Ramos into law a week later. Before Ramos' term ended, he hastily formed the NCIP, which in turn hastily issued its Administrative Order No. 1 (IPRA Implementing Rules and Regulations or IRR) on June 9 this year.

Under the US-Estrada regime

The newly-installed U.S. Estrada regime (1998-) is already showing signs of reneging on its many campaign promises and revising its priorities, amidst the accelerating crises of the system. Under such conditions, IPRA's implementation will all the more amplify its worst features.

This early the NCIP is already rocked by intense power struggles, thus adding to the general confusion already inherent in the IPRA and its IRR. Other power struggles are abrew among Cordillera bureaucrats, who are attempting either to redefine the powers of the Cordillera Administrative Region (CAR) or to resurrect the bogus autonomy scheme – if only to share in the powers, functions and funding now enjoyed wholesale by the NCIP.

In their final form, the IPRA and the NCIP are clearly alienated from the masses of indigenous peoples. They are part of the continuing effort by foreign and local exploiters to extract the wealth from our lands and trap us deeper into the oppressive social system. They give us nothing but fine-sounding words and paper titles, while attempting to coopt our leaders and organizations.

II. ON ANCESTRAL LAND RIGHTS

A. THE MAIN FLAWS IN IPRA'S ANCESTRAL LAND CONCEPT

The most basic flaw in IPRA's concept of ancestral land is that it remains wedded to the oppressive system of land ownership that exists in the country. This land system recognizes only two basic categories: lands of the public domain which are owned by the state, and privately-owned land (mostly based on the Torrens titling system) which is dominated by comprador-landlord interests. Both categories are defined by entrenched bourgeois and feudal legal standards, which IPRA merely follows.

The Constitution says that all lands of the public domain as well as other natural resources are owned by the state, and are inalienable except agricultural lands. (1987 Constitution, Art. XII, Sections 2 & 3). This concept of "public domain" is entirely based on the Regalian doctrine, which was invoked by the Spanish Crown to lay claim over the entire archipelago. The American regime and the present Republic used this same legal fiction to deny our full and legitimate ownership of ancestral lands, as most of our lands have been classified as public lands ever since. IPRA preserves the "Regalian doctrine" and the primacy of the so-called "public domain". It strictly hews to this legal foundation in its entire treatment of ancestral land rights.

IPRA's "ancestral land" concepts

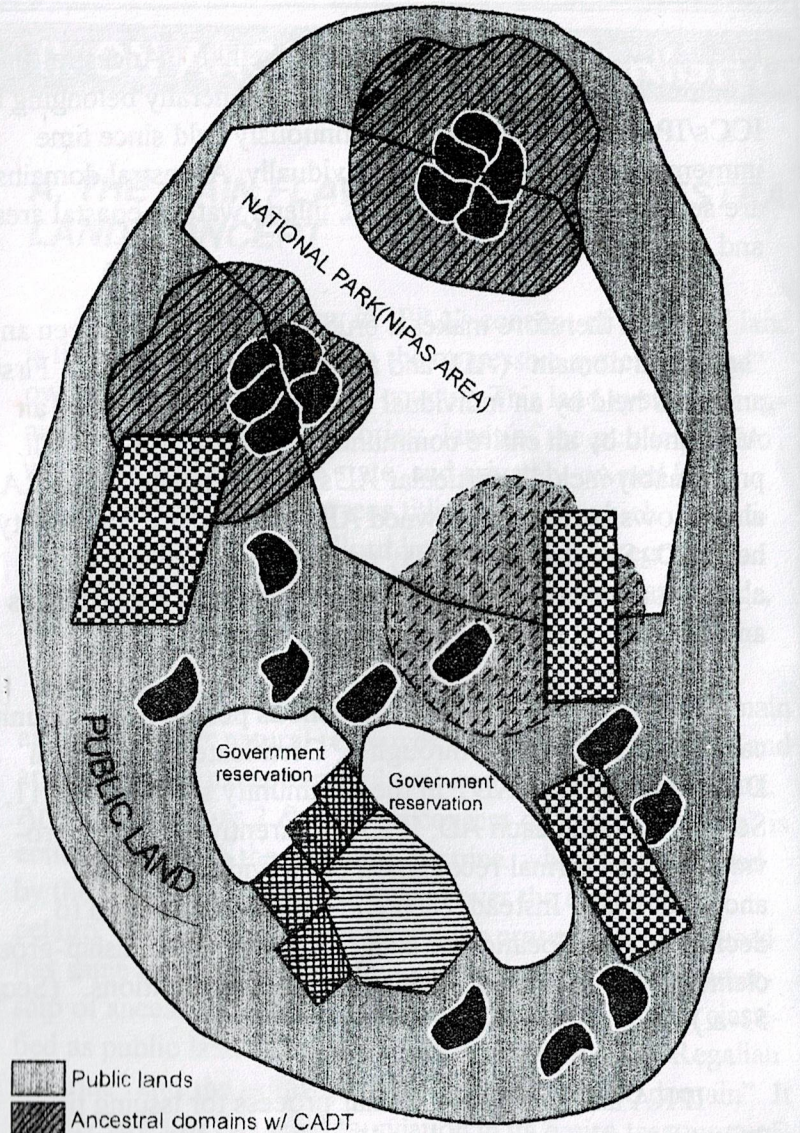
According to IPRA, "ancestral lands" are lands continuously held since time immemorial by individuals, families and clans of indigenous peoples. These lands are supposed to include residential lots, rice terraces or paddies, private

forests, swidden farms, tree lots and the like. "Ancestral domains" on the other hand are areas "generally belonging to ICCs/IPs", which they have continuously held since time immemorial, communally or individually. Ancestral domains are supposed to comprise "lands, inland waters, coastal areas, and natural resources therein."

IPRA therefore makes a crucial distinction between an "ancestral domain" (AD) and an "ancestral land" (AL). First, an AL is held by an individual or a kinship group, while an AD is held by an entire community or people. An AD will presumably include particular AL's of individuals, but IPRA also allows individually-owned AL's outside any community-held AD. Second, an AL may cover only residential and agricultural lots, while an AD covers various types of lands and the natural resources contained in them.

According to IPRA, an indigenous people or community can have its AD titled, through a "Certificate of Ancestral Domain Title" or CADT in the community's name (Sec. 11, Sec. 52). Within each AD, IPRA apparently no longer provides for any formal recognition of individually-owned ancestral lands. Instead, each community is supposed to decide on the allocation of land to individual or kinship-group claimants "in accordance with customs and traditions." (Sec. 53-a.)

IPRA also provides a similar process for issuing titles ("Certificate of Ancestral Land Title" or CALT) to individually-owned and kinship group-owned ancestral lands "which are not within ancestral domains" (Sec. 53-b). It also offers the option for individuals to secure titles to their individually-owned ancestral lands under the provisions of Commonwealth Act 141 (Sec. 12) or the Public Land Act. (Note: IPRA's IRR says that CALT's may be issued within CADT's – a curious inconsistency.)



The new Cordillera according to IPRA

IPRA's ancestral domain/land concepts, granting that these are actually implemented, will result in a land system in the Cordillera that may be represented in the diagram as shown above.

False distinctions between AD and AL

First of all, IPRA's distinctions between AD's and AL's are false. It distorts the concept and practice of ancestral land ownership as it truly exists among Cordillera's indigenous peoples. All our traditionally-held lands are considered ancestral lands – whether these are held by the community at large or by specific clans, families or individuals, and whether these lands are used for agricultural/residential purposes or not. We also call these lands our "ancestral domain", especially when we want to emphasize our absolute and all-encompassing ownership over these lands. For us, there is no essential difference between AD and AL.

Under IPRA, communally-held lands or non-agricultural and non-residential lands – which still comprise the bulk of ancestral lands in the Cordillera – become effectively excluded from AL coverage. They do fall into the broader category of "ancestral domain" but, as explained below, IPRA's AD provisions are full of loopholes and vague generalities. A community might get a title to its AD – only to find out in the end that the people have in fact gained nothing really new.

Bulk of AD lands to remain within the public domain

There is no explicit declaration in IPRA that all ancestral domains of all indigenous peoples are no longer considered part of the public domain. There are only vague references to "Native Title" and to "private but community property". Meanwhile, other IPRA provisions strongly imply that an ancestral domain – except those owned (by virtue of clear title) by individuals, families, clans, and other private property rights holders within the domain – remains part of the state-owned public domain.

This is why under IPRA, an ancestral domain may overlap with the boundaries of a public reservation or protected area (Sec. 7-g). The very definition of "ancestral domain" in IPRA includes "lands individually owned whether alienable and disposable or otherwise," and "bodies of water" (which are inalienable according to the Constitution).

Thus, an ancestral domain may possibly "enjoy" some special status by virtue of being covered by a CADT. But insofar as a large portion of its area remains part of the public domain, it remains subject to public-land laws and provisions that were not explicitly repealed by IPRA.

Various major types of land excluded from AD/AL coverage

According to IPRA's Sec. 56: "Property rights within ancestral domains already existing and/or vested upon effectivity of this Act shall be recognized and respected." IPRA also made the very definitions of AD/AL explicitly subject to Sec. 56. Thus, we can claim ownership of our AD/AL, but we can't touch a hair of the property rights already in place within the area.

This drastically reduces the total area that can be covered by AD/AL claims. Titled lands, government reservations, various kinds of land leases and concessions (as well as contracts, permits and licenses related to the use of these lands) that were granted before IPRA took effect will stay as is, even if they are located within ancestral domain boundaries. Many of these are prime lands that were accumulated by wealthy and powerful corporations at the expense of indigenous communities.

IPRA's definitions of AD and AL also leave no room for establishing the general land rights of indigenous peoples as the historically-established occupants of an entire region such as the Cordillera.

As anyone familiar with our region and its history will realize, large areas especially in rugged provincial tri-boundaries still serve as a common frontier and resource base for the various communities in the vicinity. While each community has its own territorial boundaries, there are large overlaps and gray or unclaimed areas. IPRA omits any reference to this category of land that remains important to indigenous peoples.

The state is doing all it can to retain many of these lands as public lands or reservations. In reaction, neighboring communities, kinship groups and individuals will rush to maximize their respective AD/AL claims – even at the expense of each other – if only because of their common fear that unclaimed lands will be lost forever to the state or to outside claimants. This will just exacerbate the land problem and disunity among indigenous peoples, which the state can use as the very reason for keeping such lands under its control.

IPRA also says nothing about melting-pot communities such as those in Benguet, lowland Kalinga, Abra and Apayao foothills, where people from various Cordillera areas have settled and intermingled with the original local peoples. While the resultant communities' lands no longer satisfy IPRA's definition of AD/AL, the people still practice indigenous land uses and land laws. IPRA will result in their outright exclusion from enjoying the benefits of community ownership of land within an extended Cordillera domain, while clans and families with money and government connections race each other in staking out individual land claims.

IPRA pays only lip service to indigenous land concepts

In contrast to the current bourgeois-feudal land ownership system sanctioned by the state, indigenous land concepts retain strong communal influences. They uphold the direct and collective ownership of a community of people over the land, while recognizing individual rights to specific parcels of land. These concepts have much in common with the basic peasant demand for genuine agrarian reform.

IPRA only pays lip service to these indigenous land concepts. Legal apologists point to Sections 4 and 5 as "proof" that the state now officially recognizes the broad range of these indigenous concepts. However, a careful reading shows that the two sections are mere decorations without any real impact on the law's implementation.

Sec. 4 says that AD's/AL's "shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas." But the state is merely acknowledging our deep spiritual ties to our lands; it is not giving up any of its own material claims and prerogatives over the same land. The phrasing of Sec. 5 amounts to a mere description of indigenous concepts of ownership. Nowhere does it explicitly uphold such indigenous concepts, or state that such concepts apply in specific provisions. Both sections are crude pieces of deception.

IPRA avoids any clear-cut provision that may be used to challenge the very basis of the present bourgeois-feudal land system. What it does is to push the various existing indigenous land systems into a legal framework that makes them fully compatible and integrated to the nationwide system of land ownership. Ultimately, this will only prevent our ancestral land rights (both as peoples and as individuals or kinship groups) from being truly and fully recognized as they exist in reality.

B. FLAWS IN THE LAND RECOGNITION PROCESS

Complicated, costly, lengthy, and risky process of delineation and recognition

Our AD/AL claims are supposed to be officially delineated and recognized by the National Commission on Indigenous Peoples (NCIP) so that it can issue titles such as CADT or CALT.

But the process is just as complicated, costly, time-consuming, and exhausting as those provided for in earlier laws. It uses up so much effort and resources of the claimant community or individual in preparing necessary documents, maps and other requirements, and in crawling through the NCIP bureaucracy. The process is prone to graft and corruption and irregularities. It can also induce inadvertent errors that may actually result in the community diminishing or losing its ancestral land rights altogether.

Just consider the following summarized procedure that a community is required to follow in order to get a CADT for its ancestral domain (IPRA Sec. 52, IPRA-IRR Rule VIII Sec. 2). The procedure for getting a CALT for individually-owned lands is generally similar.

First, the community files a petition for delineation with the NCIP (or the NCIP itself initiates the delineation).

Second, the NCIP's Ancestral Domains Office (ADO) undertakes the official delineation (including the community census) whereby the community presents its testimonial and documentary proof.

Third, the ADO prepares a perimeter map with technical descriptions, makes any needed corrections, and prepares its report, which is then posted and published for public comment.

Fourth, the ADO either rejects the application, or requires further proof, or settles conflicting claims, or endorses the application to the NCIP. This promises to be the most exhausting stage. In addition to the original proof submitted by the community, the Provincial NCIP may require additional proof. After more requisites are satisfied at the provincial level, the Provincial NCIP shall endorse the claim to the Regional NCIP "for verification". If the Regional NCIP "deems the claim to be sufficiently proven", it shall endorse the claim to the ADO "for review". If the ADO "finds the claim to have been sufficiently proven", it shall endorse the claim to the NCIP. Otherwise, the ADO shall require the submission of additional evidence, or reject a "patently false" claim.

Lastly, the NCIP makes a final decision on the claim. If the decision is favorable, the NCIP certifies the AD, issues a CADT, and registers a copy with the Register of Deeds. NCIP decisions are appealable only to the Court of Appeals.

The mapping component alone creates major difficulties. Most elders are of course very familiar with the territorial bounds of their communities. But IPRA's IRR (Rule VIII, Sec. 2, b-2) requires them to "identify the landmarks indicating the boundaries of their ancestral domains in a topographic map" – a highly technical, difficult, and error-prone task. After the resultant map is submitted to the NCIP Provincial

Office, the Regional Surveys Division makes a perimeter survey and a perimeter map, which the community is again supposed to validate or rectify through another survey.

Any indigenous community that decides to undergo the IPRA-defined process of delineation and recognition, with the hope of having its land covered by a CADT, actually puts itself into a risk. Its claim may be reduced in size or rejected due to "lack of sufficient proof", some mapping or documentation error, or manipulation by land-grabbers. A disapproved claim may be appealed, or a re-delineation may be requested due to previous irregularities. But this will only embroil the community in a more difficult, more complicated, and lengthier legal case.

The whole process can turn the NCIP into a veritable paradise of fixers, bribe-takers, extortionists, and double-dealers. An indigenous community not familiar with corrupt bureaucratic SOP's may be so overwhelmed by the paperwork and other requirements, that its members might just decide to give up the effort, or concentrate on their own individual AL claims. In any case, communities and clans are susceptible to the machinations of unscrupulous lawyers, surveyors, and NCIP officials.

IPRA pays only lip service to the principle of self-delineation

In Sec. 51, IPRA mentions the principle of self-delineation by the indigenous people of their lands. But in the next section (Sec. 52), it assigns to the NCIP and its Ancestral Domains Office (ADO) most of the powers of decision-making over the delineation process – thereby negating the very idea of self-delineation. Nothing in IPRA allows the community to undertake the whole delineation process themselves, with the assistance or supervision of their own structures of self-rule.

It is the ADO that undertakes the official process of delineation of a specific claim. The community is only expected to "coordinate and participate," and to submit its elders' testimonies and documentary evidence. The ADO may create "mechanisms to facilitate the delineation process," which may include people from LGUs, NGO's, and the community itself (IRR, Rule VIII, Sec. 2), but this is just optional. As a final slap at the principle of self-delineation, it is a seven-person body devoid of any direct mandate from us (the NCIP itself) that will make the final decision whether or not we really own our lands (Sec. 52-h,i,j).

The NCIP's virtual monopoly over the whole land recognition process even excludes other government agencies, with only one or two agencies getting a token supporting role. IPRA did not even assign a major role for municipal, provincial and autonomous-region governments, which are supposed to operate closer to the ground and are more attuned to the constituencies that elected them.

The burden of proof remains on our shoulders

What IPRA really upholds is not the principle of "self-delineation", but the principle that the burden of proof of our land claim remains on our shoulders. The reactionary state wants us to delineate our lands with precise map measurements, to legalize our ownership through documents with official signatures, and to mark the land itself with posts, fences and other structures, as "incontrovertible proof" of ownership. Only after we meet these requirements will the state consider our ancestral land claims valid.

As indigenous peoples, we don't need to demarcate our own lands on maps just to prove our ownership. In the first place, we know the story of these lands by heart – how they were carved out of the wilderness by our ancestors, and

nurtured and defended by succeeding generations. We only make formal delineations when they are truly beneficial to the community especially in its relation with neighboring communities, and by using customary processes long familiar to us. In contrast, IPRA forces us to adjust our land ownership practices so as to conform with the state's existing legal system and its most cherished rules about land ownership.

CA 141 as alternative way of AD/AL recognition

In Sec. 12, individuals are given an alternative option – to get their ancestral land titled under the provisions of CA 141 or Land Registration Act 496. Many of our communities were dispossessed precisely because we did not have the means to undertake the tedious titling process under this old law. The only change IPRA did was to repeal PD 705's "18-degree slope" rule. That is, our farmlands may now be classified as alienable and disposable even if they have a slope of 18 degrees or more. Still, only the moneyed and educated families stand to benefit from this provision.

To have an individually-owned ancestral land titled this way is worse than the CALT model, since the land becomes even more thoroughly separate from the community land from whence it came. It becomes easier to sell or mortgage it to outside entities. This situation will spawn a new generation of Cordillera landlords, who may or may not belong to the original indigenous communities. Thus, Sec. 12 is an outright state encouragement to fully alienate individually-owned ancestral lands and further erode communal control.

C. ON SPECIFIC RIGHTS TO ANCESTRAL DOMAINS/LANDS

Chapter III of IPRA (Sections 4-12) is devoted to "Rights to Ancestral Domains", and contains a detailed list of ancestral land rights. It would appear that all the rights we

have been fighting for are now finally recognized and guaranteed. But on closer inspection, it turns out that every major land right "granted" by the state with the left hand is withdrawn or diminished by the right hand in some other way.

No full rights of ownership over ancestral domains and its natural resources

Nowhere in IPRA does the state explicitly declare full recognition of our absolute rights of ownership over our ancestral domains. In Sec. 7 ("Rights to Ancestral Domains"), the very first point is entitled "Right of ownership", but what is actually given in the text is just the "right to claim ownership".

In short, we can claim any part of our AD – but we have to recognize and respect state prerogatives and other private property rights over these same lands. In IPRA's IRR, the enumerated "rights of ownership" over AD's are made to appear broader (Rule III, Part II, Sec. 1) but the wording remains general and equivocal. Thus, Sec. 7 combined with Sec. 56 (recognition of prior property rights) boils down to a drastic diminution of our ownership rights.

From our point of view, ancestral land rights are not limited only to farmland and house-lots, but cover all the natural resources found above, on and under the surface of our lands. Our community-based economies and family livelihoods are greatly dependent on our control of these resources. But IPRA does not recognize this mode of ownership, since it cannot overturn the 1987 Constitution that says otherwise (except in the case of agricultural public lands which are alienable):

All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna,

and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall be under the full control and supervision of the State. (1987 Constitution, Art. XII, Sec.2; underscoring ours)

Thus, IPRA might recognize our right to use, manage, and benefit from natural resources found within our lands (Sec.7-b), but these efforts must be under the state's full control and supervision. We are supposed to enjoy "priority rights" in tapping these natural resources (Sec. 57). But these "priority rights" remain subject to government regulations and restrictions, and can be enjoyed on a larger scale by big business so long as they get our consent.

Half-baked recognition of our right to refuse unwanted projects

At first glance, IPRA seems to recognize our right to prohibit the entry and operation of projects within our lands if our communities object to them (Sec. 7-b). But closer reading shows that the law's bias is on obtaining the conditionalities that will allow such projects to come in.

We are granted "the right to negotiate the terms and conditions" for others to exploit the natural resources in our areas – but not the explicit right to refuse to negotiate. We are granted "the right to an informed and intelligent participation" in any project that affects us – but not the explicit right to refuse to participate especially when our participation is being used to fabricate our consent. We are granted "the right to receive just and fair compensation for any damages" that we suffer as a result of a project – but not the explicit right to prevent such damages before they are incurred.

IPRA mentions our supposed right to "free and prior informed consent" (Sec.3-g. See further below for a detailed analysis). But suspiciously, the exact mechanism of FPIC is not invoked where it matters most – on projects related to the exploration and extraction of natural resources. We only have the "right to participate" in formulating and implementing the project (Sec. 7-b), but not the explicit right to freely give or withhold our prior and informed consent. Elsewhere (Sec. 57), there is only the vague requirement that the affected community agrees with the project – still not a definitive FPIC.

Insufficient guarantees to our right to stay within our lands

At one point, IPRA says that indigenous communities have the right to stay in their territories and not be relocated (Sec. 7-c). But in the very next provisions, the state is allowed to relocate us by means of eminent domain, "if necessary as an exceptional measure", and if we gave our "free and prior informed consent" (FPIC). Here the state is simply saying: "You IP's have the right to stay on the land, but we have the right to take your land anyway, and kick you out if necessary and if you allow us."

Even if we do not give our FPIC, the government can still invoke eminent domain to take our lands. IPRA says that we cannot be forcibly evicted in any case. But we all know the various tactics and loopholes used by the state to get our "consent" if bribery does not work: police harassment, military operations, denial of basic services and our right of way, and other means of making our stay intolerable.

IPRA says that in case we are relocated, we have the right to return to our original lands "whenever possible", "as soon as the grounds for relocation cease to exist", and "until such time [sic] that the normalcy and safety of such lands be determined." These are all dubious conditionalities that merely serve as alibis to prevent the people from returning. The state has no right to impose "normalcy and safety" requirements before allowing our return, as if we are incapable of making this judgement ourselves. We have the right to return anytime to the lands we were forced to abandon, period.

No help given to indigenous people in pursuing their Baguio land rights

After nearly a century, most of Baguio City and nearby areas of Benguet have been carved up by large government reservations, titled lands and other property rights acquired through earlier laws, in brazen disregard of the Ibaloi people's ancestral land rights. On Ibaloi lands now stand corporate mines, dams, airports, military camps, tourist resorts, industrial zones, and vacation estates of the national elite. IPRA offers nothing to rectify these violations. It preserves the present urban land ownership system that mostly favors government and corporate landholdings (including those of big real-estate, tourism and commercial-industrial businesses as well as those of the various Churches).

According to IPRA (Sec. 78), all lands covered by Baguio City's townsite reservation remain as such, and that previously recognized land rights and titles within the present city limits remain valid. This is on top of Sec. 56, which exempts pre-IPRA property rights from being overridden by ancestral land rights. The state's clear intent is to effectively bar AD/AL claims within the city (with a few exceptions), and thus protect the prime landholdings of corporations and of the government itself. Some lawyers still insist on the legal fiction that Baguio remains covered by IPRA's land provi-

sions – but this is like claiming that the Comprehensive Agrarian Reform Law (CARL) applies to Metro Manila even if there are practically no more agrarian areas there.

Thus, IPRA allows the continued application of earlier land laws that made it very hard if not impossible for Ibaloi communities and clans to pursue their Baguio ancestral claims. Even the few clans who were able to register their claims in the past decades, or were quick enough to get CADC/CALCs before IPRA took effect, will still need to spend tremendous amounts of their family resources to have these claims perfected and titled. The state remains generally biased against Ibaloi claims and in favor of protecting its own prerogatives and big corporate interests. IPRA's provisions will in fact encourage these mega-business interests to enlarge their landed possessions in Baguio, now that they are doubly-protected by Sections 56 and 78.

In the last decades, such areas as Baguio and outlying Benguet towns have experienced heavy in-migration and settlement from other Cordillera provinces and nearby lowlands – mostly of low-income families who just want to have some land to live and work on. IPRA does nothing to solve this growing land problem and to adjust land ownership systems in these areas in such a way as to benefit the masses of working people, with particular consideration for indigenous migrant communities that have already struck deep roots. What it does is merely to assuage the fears of Baguio residential lot owners against the "threat" of ancestral land claims.

D. THE FUTURE OF OUR INDIGENOUS LAND OWNERSHIP SYSTEMS

The impact of IPRA on indigenous land ownership systems

IPRA's narrow and distorted ancestral land concepts are creating widespread confusion among indigenous peoples. Worse, its implementation will aggravate disunity and land disputes among indigenous peoples in general – among communities, and among families and clans within each community – and between indigenous and non-indigenous sections of the masses. This can only benefit those who intend to grab our lands, extract our natural wealth, and exploit our difficulties in dealing with the law.

One major impact of IPRA's ancestral land provisions is to encourage families and clans with sufficient means to put most of their efforts into titling individually-owned ancestral lands. In practice, not all but only the moneyed or educated will be able to acquire titles – and only if their claims do not conflict with preexisting private property rights. Meanwhile, most community ancestral-land claims (AD's) will tend to get neglected because of the difficult titling process, except perhaps for a few large tribes that have the means to maximize their AD claims at the expense of neighboring communities. The community's collective interests and its individual members' private interests are placed at odds with each other.

These tendencies will hasten the privatization, commodification, dissipation, and ultimate demise of our ancestral lands, especially in areas where customary laws and processes of the community have been greatly eroded. Big business interests will now find it easier to enter into contracts and lease arrangements (if not outright land sale), since they only need the "free and informed consent" of an individual, a family or a clan, instead of an entire village or tribe.

Some may say that land privatization and erosion of communal control is an irreversible trend, and we might as well make the most from it. However, if we allow the reactionary type of privatization to dominate, we merely strengthen the big-bourgeois and feudal property rights inherent in the Regalian doctrine. We merely allow worse encroachments into the Cordillera by bigger land monopolies.

Obviously, the Congress that enacted IPRA dared not go beyond the bounds of the reactionary 1987 Constitution and its own class interests. It dared not undermine the current land system favorable to its class interests. It never had a vision of a truly democratic and progressive land ownership system. Thus, it merely toyed with indigenous land concepts that could fit within the present bourgeois and feudal land ownership system. Ultimately, IPRA remained within the bounds of the obsolete and discredited Regalian doctrine. We must find better alternatives to this land ownership system being pushed by IPRA.

The indigenous peoples' alternative to the Regalian doctrine and IPRA

In contrast to IPRA, a truly progressive law on indigenous peoples' rights would have upheld the democratic doctrine that the land is owned by the people, and that the state must satisfy the basic demand of "land to the tiller". It would have explicitly declared the Regalian doctrine as an invalid basis for differentiating between public and private land.

Such a law would have declared areas such as the Cordillera and large parts of Mindanao as autonomous regions, and declared the bulk of each autonomous region as the special domain of its indigenous peoples as a whole. At the same time, it would have clearly categorized three main forms of land ownership within such regions:

- state-owned lands (owned by the people as a whole, and mostly administered by the autonomous region's government)
- collectively-owned lands (such as cooperative farms, communes, and ancestral lands), and
- the various types of private individually-owned lands.

Then, based on this radically new framework of land ownership, such a law would have laid down the process of reviewing and reclassifying each and every piece of land within the territories covered by the autonomous regions.

A government that truly respected indigenous peoples' rights would have unilaterally declared its recognition of our ancestral lands and guaranteed our ownership on the basis of commonly-accepted customary laws and widely-known historical data, even before these lands are accurately demarcated on survey maps. The actual land delineation process would have been collectively conducted by indigenous peoples and communities themselves, using customary laws and traditional methods of delineation.

We do require government help in the delineation process, but this could be done through our newly evolved institutions of self-rule, which are to be formed in the process of our genuine empowerment. These bodies are more accessible to the affected communities, more compatible with local customs, and more sensitive to inter-tribal or inter-community politics in the locality, than some NCIP-like body.

Our rights of ancestral land ownership are not only limited to the lands we actually occupy or use; they cover the natural resources found therein. We do acknowledge that these resources are part of the nation's patrimony, and can

provide tremendous contributions to genuine national development. We are willing to share these resources with the entire nation under a truly democratic, progressive, equitable, and sustainable economic system, where it will truly benefit us together with the majority of the people. But we must absolutely deny these resources to an economic system such as what we have now, which benefits only the imperialists and big comprador-landlord-bureaucrat groups, and does so in a very rapacious and destructive way.

Indigenous peoples in the Cordillera have long fought for specific ancestral land rights, but we have also evolved the unprecedented demand to defend the entire region as the historical domain of all our peoples. The Cordillera Peoples Alliance has consistently pushed for the full recognition and defense of this domain, and of all the ancestral lands contained in it. This demand serves a major part of our struggle for self-determination.

This domain fully accommodates the honestly-acquired land rights of settler peoples, who are also ordinary working folk like us. Many non-indigenous communities and families have settled down for good in some parts of the Cordillera, while some of our own indigenous folk have themselves settled on lands elsewhere, as in the Sierra Madre and Caraballo. Definitely, a progressive law on ancestral lands must recognize and respect such rights especially of peasants and other poor settlers, insofar as they acquired the land honestly and fairly. But we must certainly reject and exclude the landed interests of the imperialists and comprador-landlord groups, whose rights to the land were mostly acquired at the expense of indigenous and peasant communities and through the most abusive exercise of political power.

A truly progressive law on indigenous peoples' rights should ensure that Baguio City is included in such a Cordillera domain. The urban landscape has modified earlier ownership patterns, true. But this is no excuse to dismiss the ancestral land rights of Ibaloi communities and clans and to disregard the continuing practice of customary land laws wherever applicable.

If the urban land monopoly by comprador-landlord groups is broken up, the territory of Baguio and its environs should be vast enough to satisfy its mixed population's various needs and demands for land. If truly empowered, they would surely support reforms in the urban land ownership and tenurial systems that truly benefit the majority of both indigenous and non-indigenous peoples. There is no reason why we should not be able to settle the long-standing Ibaloi land claims justly and fairly, while respecting the legitimate land rights of other indigenous and non-indigenous people who came later, and leaving enough besides for common public use and environmental protection.

III. ON OTHER INDIGENOUS PEOPLES' RIGHTS

ON SELF-GOVERNANCE AND EMPOWERMENT

With regards self-governance and empowerment, the most obvious flaw of IPRA is that it merely presumes the existence of concrete processes and structures of self-governance and empowerment. It merely expects other laws such as organic acts on autonomous regions to "take care of the details", instead of using its own mandate to establish such structures and processes. The whole of Chapter IV ("Right to Self-Governance and Empowerment) limits itself to general declarations, and does not even reach 1/5 of the length of the two chapters on ancestral land.

Underlying this defect is a more basic one: IPRA itself was crafted and is being implemented by a reactionary state that has a long record of elitism, fascism, and national chauvinism. It has steadily opposed true self-governance for indigenous peoples and genuine empowerment for oppressed classes. As indigenous peoples, we cannot hope for a better deal under IPRA than what we had under the previous political schemes of the state, such as the Organic Acts, CAR, SPCPD, ONCC/OSCC, PANAMIN, and the old Commission on National Integration.

IPRA does not truly recognize our right to self-determination

IPRA is being implemented in the absence of genuine regional autonomy – and therefore in the absence of the structures and processes of self-rule by indigenous peoples. Thus, its main provisions on "self-governance" and "empowerment" are all just decorations as far as we are concerned.

The ARMM in Mindanao is a caricature of genuine autonomy for the Moro peoples. Here in the Cordillera, the CAR (an administrative region with a "regional assembly" and "executive board") is an even more laughable parody of regional autonomy. The two government attempts to foist bogus autonomy in the Cordillera were soundly rejected by the masses. The very fact that it was the same Congress that came up with IPRA and the rejected Cordillera Organic Act, underscores our point that both laws are cut from the same questionable cloth.

Furthermore, our right to self-determination is not expressed merely by setting up the political structures and processes of self-rule. It is much more comprehensive because it covers the various economic, political, cultural, and social aspects of our people's lives. Based on our long experience in fighting for Cordillera peoples' rights, we cannot truly enjoy the right of self-determination and reap long-term social benefits in exercising this right, so long as Philippine society remains semi-colonial and semi-feudal. Our comprehensive right to self-determination can only be fully assured when the Philippines as a whole becomes truly democratic and independent from imperialist rule.

The NCIP's very nature negates self-rule and empowerment

The very nature of the NCIP, as created by IPRA, violates the principles of self-governance and empowerment. In fact, the government is gearing up the NCIP as a most effective tool to help ensure the non-empowerment of indigenous peoples.

Anti-democratic and misrepresentative

First of all, the very manner of its creation shows the anti-democratic and misrepresentative nature of the NCIP. It is composed of seven commissioners appointed by the President (Sec. 40), not elected by us or by our legitimate representatives. The seven areas from which the NCIP members are to be selected – Region I-Cordillera, Region II, the rest of Luzon, the Visayas and adjacent island groups, and three Mindanao subdivisions – are not true "ethnographic areas". These "ethnographic areas" are arbitrary and merely aggravate the misrepresentation of indigenous peoples. The NCIP's number – seven members as against the seven million IP population – underscores the undemocratic nature of the body, considering its awesome powers.

Second, as presidential appointees with no constitutional tenure and subordinate to the Office of the President, the NCIP members will be beholden only to the President and to their own loyalties, not to the masses of indigenous peoples

as their logical constituency. The very smallness of the NCIP makes it very susceptible to undue pressure from Malacanang, Congress, and corporate lobby groups.

The NCIP is supposed to constitute a consultative body "consisting of the traditional leaders, elders, and representatives from the women and youth sectors of the different ICCs/IPs" (Sec. 50). However, this is a mere advisory body with no real powers, and whose composition and workings are purely at the NCIP's discretion.

Overwhelming powers

The NCIP can easily turn into a super-agency with tentacles everywhere. IPRA gives it too much powers and functions, making it even superior to autonomous regions and LGU's in several respects. Section 44-a sweepingly says: the NCIP is "to serve as the primary agency through which ICCs/IPs can seek government assistance and as the medium through which such assistance may be extended." In IPRA's IRR, the NCIP arrogates to itself far more powers and functions. The NCIP's awesome powers include the following:

First, as elaborated in Chapter III ("Rights to Ancestral Domains"), Chapter VIII ("Delineation and Recognition of Ancestral Domains") and elsewhere, the NCIP enjoys the near-absolute power to approve or reject ancestral domain/land applications and to rule on land-related disputes raised before it.

Second, the NCIP enjoys decision-making jurisdiction "over all claims and disputes involving rights of ICCs/IPs" (Sec. 66). It has quasi-judicial powers (Sec. 69): it can promulgate its own rules in the hearing and disposition of cases; it can administer oaths and issue subpoenas; it can hold any person in contempt; and it can issue injunctions. Its decisions are appealable only to the Court of Appeals (Sec. 67). "No inferior court" can issue any restraining order or writ of preliminary injunction against the NCIP on matters within its jurisdiction (Sec. 70.)

Third, the NCIP has the power to issue certifications as "a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation" by any private or government entity "on any part or portion of the ancestral domain" (Sec. 44-m). In this regard, the NCIP is only directed to "take into consideration the consensus approval of the ICCs/IPs concerned", but is not legally obliged to obtain it and comply with it. The NCIP effectively replaces the role of DENR and similar government agencies insofar as indigenous peoples are concerned.

Fourth, the NCIP serves as the government's overall center for policy review, formulation and implementation on indigenous peoples' concerns. It can formulate and implement policies, plans, programs and projects, and submit related legislative proposals to Congress (Sec. 44-c). It can convene "periodic conventions or assemblies of IP's" to review, assess, and propose policies and plans (Sec. 44-i). NCIP bureaucrats can thus place themselves at par or above their LGU and "autonomous region" counterparts in terms of overall political influence.

Fifth, the NCIP can enter into contracts, agreements and arrangements with private or public entities, and obtain loans to finance its programs (Sec. 44-f). It can negotiate for funds, and accept and administer "grants, donations, gifts and/or properties in whatever form and from whatever source" (Sec. 44-g). Thus, the NCIP can easily become a super-moneybag – a lucrative channel of international and corporate funds – apart from its regular budgetary allocations. What a promising haven for corrupt and corruptible bureaucrats!

Sixth, the NCIP is authorized to represent the Philippine indigenous peoples "in all international conferences and conventions dealing with indigenous peoples and other related concerns" (Sec. 44-q). It can insist that it take over the seats held by IP organizations and non-government adovacy groups in the various international bodies. This is a brazen usurpation of our right as IP's to represent ourselves internationally.

Note that the crucial powers and functions related to ancestral land and customary laws – the very core of tasks of a genuine autonomous government – did not even merit a single article or section in R.A. 8438 (An Act to Establish the Cordillera Autonomous Region). This shows a clear and deliberate plan of the reactionary state. While "autonomous regions" were being noisily set up in the Cordillera and Mindanao, these crucial powers and functions were quietly being retained by the national government (first through the DENR, then through the NCIP).

What is taking shape is the complete opposite of that in a truly democratic political system, wherein the powers and functions relating to indigenous peoples' rights are assigned to appropriate bodies at the regional and local levels, particularly the agencies of autonomous regions, local structures of self-rule, and quasi-governmental councils.

More powers under IPRA's IRR

The NCIP, in the IRR it issued, arrogated to itself more powers of highly questionable basis and intent:

First, the NCIP intrudes too much in the customary process by which we recognize our traditional leaders and elders. It can ask us to submit a list of our "traditional socio-political leaders with their corresponding titles" (Rule IV, Part 1, Sec.1). It will then subject the lists to "field validation" and compile them into a national directory.

The process is supposed to be "voluntary." But it becomes mandatory in practice, because the IRR reserves major roles for NCIP-registered or –authorized leaders and elders. For example, community signatories to any MOA must be NCIP-registered elders or leaders. The IRR also requires that "only the recognized registered leaders are authorized to issue certificates of tribal membership to their members." The NCIP clearly intends to exercise a strong leverage over our elders and traditional leaders by dangling a seemingly higher status or more secure "title" for those who register.

Second, the NCIP intrudes too much in the customary processes by which we deal with indigenous people's organizations (IPO's) and NGO's working within our areas. The IRR says that "for the purpose of acquiring legal personality, IPO's may register" with the NCIP (Rule IV, Part II, Sec. 2). The intent is more obvious in the case of NGO's, wherein accreditation is mandatory: "NGO's with intentions of operating, or already operating, within ancestral domains shall have to be accredited" by the NCIP (Rule IV, Part II, Sec. 4).

Registration & accreditation with the NCIP merely duplicate similar requirements imposed by LGU's. They require the IPO or NGO to submit the following: a list of officers and leaders; organizational structure (NGO's) and genealogical surveys (IPO's); SEC registration in the case of NGO's; programs, plans, and organizational policies; and annual reports that include financial and accomplishment reports. The NCIP's power to issue, withhold or revoke Certificates of Registration/Accreditation can be used to whip into line those IPO's and NGO's that do not meet its standards of good conduct.

Third, the NCIP can conduct censuses among indigenous peoples, as indeed it plans to do as part of its 5-Year Program. It can authorize community leaders to issue "certificates of tribal membership" which shall then be confirmed by the NCIP based on its census and records. It even imposes an initial census of community members (including a list of community-recognized leaders/elders and a description of the community-recognized PO) as a requirement of its ancestral domain delineation process (Rule VIII, Sec. 2, b-5 and i).

Overall impact of a powerful NCIP

• The NCIP can use its awesome powers to repress, control, or edge out independent, militant, and truly progressive organizations working among indigenous peoples.

• The NCIP's powers create a fresh and fertile ground for graft and corruption among bureaucrats and clients, especially in the handling of funds, ancestral land recognition, granting of permits and leases, and brokering MOAs between communities and project proponents.

• The creation of a large NCIP bureaucracy will tempt professionals from our ranks to pursue their interests within its confines. With new-found wealth and loyalties, they run the risk of being coopted and corrupted by the rotten system, and of being used against the masses. Meanwhile, they help create the illusion that the masses are now truly enjoying self-rule, or at least an alternative to the discredited "autonomous regions".

• The ruling regime can use the NCIP to whip Mindanao and Cordillera local governments and bureaucrats into line and whittle their powers whenever they get too intractable.

• When NCIP finally falls flat in its avowed mission, despite its being led and staffed by people who come from IP's, the rabidly anti-NM reactionaries will use its very failures to discredit the very principles of indigenous peoples' self-rule.

• All in all, the NCIP is ready for use as a powerful tool of the reactionary state for preserving and aggravating our non-empowerment as indigenous peoples.

Loopholes in IPRA provisions on "free and prior informed consent"

According to IPRA, indigenous communities have the right to decide whether to allow or not the entry and operation of specific programs, projects, and other activities by outside entities. The supposed guarantee is that project proponents are required to first get our "free and prior informed consent" (FPIC). This is defined in Sec. 3-g: "[It shall mean] the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent of the activity, in a language and process understandable to the community."

Loopholes of FPIC process

Our right to give or withhold our consent to any program or project that affects us is indeed an important part of our right to self-determination. An obvious weakness of IPRA is that this concept was not fleshed out in sufficient detail by the law itself. The IRR gave detailed procedures and guidelines for FPIC (Rule IV, Part III.). But it also introduced loopholes that will surely be exploited by powerful oppressive forces. The biggest loopholes in the IRR include the following:

First, the FPIC does not apply to "unaffected communities." The IRR says: "When the policy, program, project or plan affects only the particular community within the ances-

tral domain, only such community shall give their free and prior informed consent" (Sec. 4). The NCIP can declare that such and such communities are not or only minimally affected, thereby excluding them from the FPIC rule. Also, this provision explicitly applies only to communities covered by ancestral domains.

Second, the project proponent seeking our consent is not explicitly obliged to fully disclose and allow full access to records and information pertinent to the project. It is only obliged to submit to us, as a prerequisite to the FPIC, a written promise that it will allow such disclosure and access (Sec. 6-a) at some indefinite time. It is obliged to submit to us an "Environmental and Socio-cultural Impact Statement" (Sec. 6-b), but no mechanism is provided for us or the NCIP to make an independent verification.

Third, on the question of "development and cultural activities subject to FPIC", the IRR brazenly violates its own rules. It says here: "The NCIP [i.e., not the affected indigenous people] shall prescribe terms and conditions regarding public presentation, display, performance and other forms of utilization of ICCs/IPs lifeways and material culture" (Sec. 7). The NCIP thinks it has the right to decide for us by proxy.

In addition, there is also the reality of various forms of pressure. Based on our experience, these include attempts to bribe local leaders, various intimidation tactics, and outright military-police operations to silence local opposition. Ominously, IRR provisions on FPIC do not contain any prohibition against such dirty tactics.

The IRR opens the FPIC process to attempts by project proponents to soften community resistance with the color of money. For example, the project proponent may issue a bond with the NCIP to cover for compensatory measures (Sec. 6-c). Also, it is obliged to "underwrite all expenses attendant to

securing" our consent. These are not essential to community decision-making and should have been struck off, since they will merely push us to feel indebted to the project proponent.

Loopholes in MOA mechanism

In Sec. 57 and elsewhere, an indigenous community is given the option to enter into a formal and written agreement with an outside entity allowing that entity to take part in developing and utilizing the community's natural resources. The agreement may cover a period of 25 years or less, renewable for another 25 years at most. In the IRR, this option was made mandatory, as a "component part of the process of securing" a community's FPIC (Rule IV, Part III, Sec. 8). The resulting Memorandum of Agreement "shall be executed by and between" three parties: the project proponent, the host community, and the NCIP. This mechanism has opened up more loopholes:

First, the MOA is no longer between two parties (the project proponent and the community), since the NCIP is the obligatory third party. We know what this really means: the NCIP is there to help the project proponent preserve the agreement even if the community already wants out. This type of MOA is an onerous arrangement.

Second, if we accept a MOA (with our leaders/elders as signatories), we are legally bound to abide by it and can no longer simply withdraw should we change our minds later. Only the NCIP or a higher court can stop or suspend the project after a MOA is signed. At least when we merely give our consent without any MOA, we implicitly reserve the right to withdraw the same consent and put a stop to the project based on our own customary processes.

The central flaw of the IRR provisions on FPIC is that the NCIP itself does not merely act as an outside observer,

but as an active organizer and participant in the whole process. It is a powerful national agency intruding into what is supposed to be a community-based and customary decision-making process. Thus, its functions are tantamount to external manipulation and interference, and violates the very principle of FPIC. Ultimately, the underlying aim of the state in playing the FPIC game is to assure big business interests that they can strike more advantageous deals with our communities if they make the right legal moves and offer the right price.

IPRA's impact on indigenous socio-political systems and institutions

Indigenous socio-political systems (ISPS) remain influential in the day-to-day lives of communities in the Cordillera and elsewhere. Long before IPRA, the overall tendency has been their gradual dissipation. In the Cordillera, the state has been forcibly imposing its own nationwide system of laws, processes and structures for more than a century now, backed up by powerful socio-economic factors such as the growth of cash economy. Increasingly, our communities and leaders have had to interact with and work within this system.

The overall impact of IPRA on these ISPS is to accelerate their piecemeal assimilation into the reactionary socio-political system existing nationwide. The NCIP is being groomed to serve as the main government agency for doing the job. Through it, the state will integrate those aspects of our ISPS that it finds useful and compatible with its national legal system. Those aspects conflicting with the national system will remain outside the pale of the law where they will be subjected to disparagement, suppression, and even criminalization.

NCIP to become the virtual "indigenous peoples' government"?

The IPRA and its IRR are geared towards the extensive cooptation of our elders and traditional leaders into the existing national political system. It is no longer enough that they are recognized as the main interpreters and stewards of customary law. Under the NCIP's tutelage, they are now expected to register properly as our authorized representatives, and behave like the board of directors of a business firm. The state wants to turn them into its auxiliary machinery.

Rule VIII Part II of IPRA-IRR (Ancestral Domain Development and Protection) mentions our right to freely pursue our economic, socio-political, and cultural development. But the rest of the section cites a long list of "thou shalt's", which require us and our elders to become NCIP's tools in making and implementing "management and development plans". This is violative of the very principle of self-determination and respect for ISPS.

The NCIP is gearing itself to become the socio-economic planning agency of all indigenous peoples, with our elders obliged to function as its extensions. All community plans within an ancestral domain are supposed to be merged into an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), the contents of which are defined in detail in the IRR, and which we are required to submit to the NCIP. Each community through its PO or council of elders are required by the IRR to conduct information dissemination drives, baseline surveys, development needs assessment workshops, and peoples' assemblies to validate the ADSDPP.

In Sec. 15, IPRA appears to recognize our right to use our own "commonly accepted justice systems, conflict resolu-

tion institutions, peace building processes or mechanisms and other customary laws." But it also says that our right to use these laws is limited only "within [our] respective communities and as may be compatible with the national legal system and with internationally recognized human rights." This simply means that, after all, nothing has changed in the reactionary state's basic treatment of our ISPS – which is to suppress or disregard customary laws incompatible with its own legal system.

We have been exercising our right to use our own customary laws within our respective communities for centuries, and shall continue to do so with or without IPRA. However, the implied restriction that we can only use these laws "within our respective communities" is highly objectionable. It disregards our practice of seeking and applying commonly-accepted customary laws and innovative mechanisms for resolving conflicts among our communities.

To be fair, Sec. 65 appears to state otherwise: "When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute," although IPRA does not say whose customary laws and practices are to be used. In the very next provision, however, Section 66 states that "the NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs." Such cases can be brought to the NCIP for adjudication if the communities cannot resolve the dispute according to customary law.

The danger is that the NCIP will now think it can settle the perennial points of conflict between customary and national law, and among the contending variants of customary law – as if it were some kind of "Supreme Court of indigenous peoples". This will only aggravate tribal conflicts, especially if one party to the dispute tries to gets a clear edge by raising the case to the NCIP and invoking national law instead of customary law. There is no guarantee that the NCIP itself can settle the dispute justly and fairly. It may actually worsen the conflict because law enforcement agencies are now obliged to come in and enforce its decisions.

At best, the involved communities will avoid NCIP adjudication and settle the conflict through commonly-accepted inter-community mechanisms (such as *bodong*, *ator*, *tongtong*, *hidit*, and of course the option of tribal war) – which we have been practicing for ages. IPRA does not explicitly recognize these practices, nor provide acceptable mechanisms for them to develop and evolve on their own. IPRA also avoids explicitly giving indigenous judicial bodies, or tribal courts, the same stature as regular courts of law. The blanket judicial authority given to the NCIP is actually preemptive and biased against our own efforts to develop customary mechanisms that can handle a wider range of inter-community or inter-tribal disputes and cases.

On the status of independently armed tribes and armed tribal feuds

It is commonly known that many Cordillera peoples (as well as Moro and Lumad peoples) still preserve the skills and status of tribal warriors, and hold war mobilizations as the need arises, to maintain the community's defensive capabilities and options. They may conduct inter-community feuds when peaceful settlement of disputes fails. Some have used armed action to defend their lands and resources against equally armed big business or government intruders. Each community values highly the weapons kept by its members. (Such weapons can include automatic assault rifles.)

The issue of keeping our arms and keeping our armed options open is almost as crucial to indigenous communities as the issues of ancestral land and self-governance. Indeed,

what has enabled us to keep our lands and remain independent from colonial rule for centuries had been our capacity for armed defense (including retaliatory and punitive action).

IPRA is totally silent on this issue. Nowhere does it recognize the historical right of indigenous peoples to bear arms and to use these for just and legitimate reasons of self-defense and enforcement of customary law. Since it recognizes our right to use only those customary laws and practices "as may be compatible with the national legal system," by implication, national gun laws and other criminal laws strictly apply.

How can we invoke IPRA, whenever the government moves to confiscate our mostly unlicensed arms and jail us for "illegal possession" and other crimes? How can we invoke IPRA, whenever the military or police intervenes in inter-community feuds, even though experience shows that such intervention almost always worsens and complicates the conflict? In practice, IPRA will prove incapable of handling this issue in favor of indigenous peoples, since it would have to open to question the state's national legal system, especially the virtual monopoly of armed power and military-police functions by the AFP-PNP.

ON SOCIAL JUSTICE AND HUMAN RIGHTS

The main IPRA provisions on social justice and human rights, contained in Chapter V ("Social Justice and Human Rights"), are merely lifted from the provisions of the 1987 Philippine Constitution and existing international standards such as the UN Universal Declaration of Human Rights. IPRA does not offer broader definitions or stronger guarantees of social justice and human rights. Its IRR does not do much else, except repeat the same tired promises and programs as those of other government agencies, including previous agencies dealing with indigenous peoples.

It is true that IPRA, like other national laws and international standards, contains provisions that formally reflect certain progressive concepts or basic people's demands. In most cases, however, these provisions simply remain unheeded. They are put on paper mainly for the state's propaganda to be able to claim its adherence to the principles of "social justice and human rights". In practice, these provisions are violated outright or sidestepped in various ways, whenever they hinder the ruling classes' more primal objectives of "national development", private property rights, "national defense", and peace and order.

On social justice

Anyone familiar with Philippine laws on the socio-economic rights of workers, peasants, urban poor, women, children, the elderly, and the disabled, can take a look around Cordillera's communities and social sectors. You will see the glaring discrepancy between what is written in law and what exists in reality.

The government itself admits that the Labor Code and CARL provisions on workers' and farmers' rights are being violated with impunity by big capitalists and landlords. It also admits that its own social welfare services are breaking down because of an economic crisis it can no longer grapple with.

There is absolutely no reason for us to believe that now, with IPRA, the reactionary state is suddenly going to make things right and improve our socio-economic situation here in the Cordillera and elsewhere.

On human rights

In the experience of indigenous peoples, as well as the entire Filipino people, the foremost violator of human rights

in the country in the past decades is none other than the reactionary state and its armed instruments, the AFP and the PNP. In the Cordillera, its fascist instruments also include the notorious paramilitary group, CPLA. No regime from the time of the US-Marcos dictatorship down to the present US-Estrada clique could claim that it has finally put a stop to human rights violations.

IPRA, like other deceptive laws that came before it, does nothing to rectify the bloody record of the AFP-PNP and the CPLA in subjecting our peoples to fascist violence and other human rights abuses. Sec.12 enumerates the supposed "special rights" of ICCs/IPs during armed conflict, but these are expressed in very general terms. They offer no concrete guarantees that apply to the present armed conflict, which often involve indigenous peoples. For example:

According to IPRA, the state "shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs." But it does not question the CAFGU, which the AFP forms by using essentially coercive methods. The IPRA does nothing about the state's usual practice of arming, funding and protecting paramilitary groups, such as the CPLA, which are mobilized by the AFP-PNP for combat operations in indigenous peoples' areas but which remain outside the its official chain of command.

IPRA supposedly prohibits the state from relocating communities in special centers "for military purposes under any discriminatory condition". But it does not prohibit relocation intended for other purposes such as "law enforcement" or "public safety" – which are the standard alibis in forcibly evacuating communities covered by AFP-PNP operations. Until now, for example, the evacuee Isneg peoples of Marag

Valley have not yet been able to return to their original villages since the AFP militarized their ancestral lands in 1990.

IPRA does not explicitly prohibit the state from setting up military camps and combat facilities within our ancestral lands, especially without our consent. In fact, a great number of such camps and facilities are spread all over the Cordillera (not to mention other areas in Mindanao and elsewhere), and are often the subject of community petitions for removal.

IPRA's IRR adds the "right of ICCs/IPs to declare their territories as zones of peace". But no definition of "zone of peace" is provided, making this point worthless. We recall that the community of Sagada in Mt. Province was declared a "zone of peace" since1988. But that did not stop the AFP from maintaining a heavy military presence, launching combat operations, and incurring more human rights abuses in and around the community for the next several years.

ON CULTURAL INTEGRITY

One major issues of indigenous peoples is the long-standing distortion, commercialization, and other forms of abuse heaped on our culture, with big business and reactionary agencies as the main promoters and beneficiaries. Such practices demean our beliefs, lifeways, and customs and traditions as reflected in our language, ritual practices, literature, music, dance, and practical arts and handicrafts.

IPRA pretends to uphold our main demands in the field of culture. But on closer analysis, what it does is to spell out the conditions and procedures by which outside entities (such as big business) can tap into our cultural heritage for profitable purposes. In most cases, the only requirement is that we give our so-called "free and prior informed consent" (FPIC). In fact, the IRR provides that we enter into a formal agree-

ment and get our share in the income derived from such activities – thus encouraging us to join in our culture's commercialization.

IPRA says that it shall be unlawful to explore and dig "archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values" without the FPIC of the community concerned (Sec. 33-a). As explained earlier, the FPIC process is riddled with loopholes, and is no sufficient guarantee of cultural protection especially against the tentacles of big business. A much stronger guarantee would have been the additional requirements that (a) the project must be purely for archaeological study and must truly benefit the people; (b) that all finds must be kept and managed by the community; and (c) that the project must not be under foreign control.

IPRA appears to acknowledge our right of full ownership, control and protection over our "cultural and intellectual rights" (Sec. 34). However, outside researchers are again allowed to tap into our indigenous knowledge systems and practices, particularly into our biological and genetic resources, requiring only the loophole-ridden FPIC.

Such "scientific" researches, especially those conducted by foreign companies and institutions, can easily be used to turn our folk knowledge and bio-genetic resources into commodities sold for profit – a repulsive concept as far as we are concerned. Through the so-called FPIC and especially with the promise of royalty payments to be received by the community (IRR, Rule VI, Sec.15-e), IPRA actually induces our communities to conform to the principle of TRIPS as demanded by GATT-WTO. IPRA's approach preempts us from evolving alternative modes of preserving and sharing our folk knowledge and bio-genetic resources, while avoiding the imperialist framework of "intellectual property rights".

IV. OUR RESPONSE AS INDIGENOUS PEOPLES

THE OVERALL IMPACT OF IPRA ON INDIGENOUS PEOPLES

To summarize, IPRA does not provide the solution to our long-standing problem of being oppressed as indigenous peoples. Neither does it provide the comprehensive legal framework for truly recognizing and respecting our full range of rights. On the contrary, it gives the state a smokescreen of legitimacy and the blessings of "international standards", as it enables the imperialists and the local ruling classes to grab our lands, plunder our resources, and rule over our peoples more thoroughly than ever before.

IPRA is exceptionally deceptive because it uses seemingly progressive-sounding concepts and phrases to prettify the same rotten system that oppresses and exploits us. Behind the deceptive words, IPRA will merely deepen the subordination of our peoples and lifeways into this system.

IPRA's role can be fully understood, if placed in the context of the current drive of U.S. imperialism to stave off the global crisis and its own decline by intensifying its worldwide control and plunder. In this context, succeeding regimes from Marcos to Estrada have been drawing up so many comprehensive laws and programs in the service of the imperialist agenda.

These laws and programs include various forestry laws and programs spun off from PD 705; the Philippine Mining Act of 1995; the NIPAS Law in relation to the bio-genetic and tourism potential of our lands; the various schemes of

liberalization, privatization and deregulation applied to the different areas of the economy; and now, IPRA.

One way of viewing the potential long-term impact of IPRA on indigenous peoples' movements is to review the experience of the workers' and peasants' movements when the reactionary state enacted similar "comprehensive reform" laws.

The labor and peasant movements had thrived for decades with only general laws and rules to guide the government in handling them. True, the lack of explicit laws covering specific demands and struggles placed these movements in a legal limbo. On the other hand, this very absence meant that the workers and peasants could pursue their demands and struggles and create their own legality based on their inherent merits and strengths.

As these mass movements advanced, the state could no longer simply dismiss them. It had to keep control by refining its legal framework, offering some legal concessions, and even forming its own "workers unions" and "farmers associations", in order to rein in the mass movements. Hence, the labor movement now has the Magna Carta of Labor (Labor Code), while the peasant movement has the CARL.

The Labor Code may reflect to some extent the workers' past struggles and offer a minimum standard of workers' rights. But it is essentially the reactionary state's tool to trap the labor movement in that hopeless tangle of economism, legalism, and bureaucratism that is most obviously seen in yellow trade unions. Similarly, the CARL might faintly reflect past peasant struggles, but it is essentially a deceptive and inutile piece of reactionary legislation that preserves the semi-feudal economy.

Now the state is making another historic attempt to impose a new "legal paradigm" – this time, IPRA for the indigenous peoples. IPRA and the NCIP may develop into a full-blown, well-entrenched, routinely enforced system similar to the Labor Code and DOLE, with their vast array of legalities covering even the minutest aspect of labor cases. Or possibly, IPRA and the NCIP will gradually wilt into a half-baked, tokenist program that nobody takes seriously, not even the government itself – as has become of CARL and other DAR schemes. But that is the problem of the state, not ours.

As indigenous peoples, we have our own critical choices to make.

THE INDIGENOUS PEOPLES' RESPONSE

Do we accept IPRA and work within its confines?

A full-blown bureaucratic system is now gradually being put into place by IPRA and the NCIP. Our IPRA-defined "rights" are now covered by NCIP-mediated processes, within which we are now supposed to take up our demands instead of taking to the streets (or "to the hills" for that matter).

Are we now willing to concede to IPRA as the pervasive legal framework for pursuing our struggles as indigenous peoples, perhaps with IP lawyers by our side, like so many labor unions attempting to make the Labor Code work for them with the help of labor lawyers? Should we accept IPRA as it is, work with its seemingly positive provisions, and try to bypass its defects and obstacles? This is what narrow reformists would want us to do. They would have us believe

that we can "use IPRA as a tool" despite its basic defects, and that we can follow every legal twist and turn as nimbly as a lawyer can.

No, conceding to IPRA would just draw us into an endless maze within the oppressive legal system – a maze designed by the state to confine our demands and struggles into terms that are acceptable to the imperialists and local ruling classes. We must not fall into this trap.

Do we amend IPRA to improve it?

Some well-meaning advocates admit that the "bad parts" of IPRA must be rejected but insist that there are "so many good provisions" worth saving. They say, "IPRA is a good law burdened with bad provisions. We should work for its amendment, not its repeal."

Attempting to amend this law through the usual legislation is useless, because it was produced by a pro-imperialist, elitist and conservative legal philosophy that is built into the fabric of the reactionary state. IPRA itself was drafted sloppily, but reactionary lawmakers know exactly where their interests lie. Give Congress another chance, and it will probably produce a worse law – as in the case of the two successive acts on the Cordillera Autonomous Region.

IPRA's bad provisions comprise the key points of the law, and make the "good provisions" hopelessly bankrupt. If we were given rice with a potent poison mixed in, should we attempt to leach out the poison and dare to eat the stuff? No, the defects are too embedded in the law's basic design. One cannot replace a major IPRA provision without bringing down the whole edifice. The whole law must be repealed.

Reject IPRA, pursue demands and struggles for comprehensive IP rights!

In the long run, our best option is to firmly and consistently reject IPRA as an inutile law. We must expose its basic defects, and oppose the implementation as much as possible of its questionable provisions. Instead, we must pursue our demands and struggles based on their inherent merits and on our own self-defined framework.

In the last analysis, our specific demands and struggles can only advance in the context of fighting for genuine national freedom, democracy, and our comprehensive right to self-determination. We must work for a general overhaul of the country's political-legal and economic system, so that we can achieve the best environment for fully enjoying our rights as indigenous peoples. This is the militant progressive position that reflects our long-term interests and deep-most aspirations.

Meanwhile, we must closely follow how the reactionary state and other institutions implement IPRA in actual practice. At first, our various communities, sectors and organizations will probably express widely varying reactions and responses. As always, we must study the concrete situation and the main issues in our communities. We must unite the masses and the broad sectors comprising our peoples, and rely mainly on our organized strength and mass actions to achieve concrete gains as permitted by the situation.

Sooner or later, our mass movement and the state's actual conduct itself will completely expose the bankruptcy of IPRA. In place of this useless law, we ourselves must articulate and elaborate our long-term demands and platform as indigenous peoples. We can do this by participating in theoretical studies, researches, popular discussions, and

actual mass struggles. In the process, we ourselves can begin to give shape to a truly progressive law on indigenous people's rights that will come about under a truly independent and democratic Philippines.

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Glossary of abbreviations

AD	ancestral domain
ADB	Asian Development Bank
ADO	Ancestral Domains Office
ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
AFP	Armed Forces of the Philippines
AL	ancestral land
ARMM	Autonomous Region for Muslim Mindanao
CA	Commonwealth Act
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CALC	Certificate of Ancestral Land Claim
CALT	Certificate of Ancestral Land Title
CAR	Cordillera Administrative Region
CARL	Comprehensive Agrarian Reform Law
CPA	Cordillera Peoples Alliance
CPLA	Cordillera Peoples Liberation Army
DAO	Department Administrative Order
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DOLE	Department of Labor and Employment
ECIP	Ecumenical Commission for Indigenous Peoples
FPIC	free and prior informed consent
FTAA	Financial and Technical Assistance Agreement
GATT	General Agreement on Tarriff and Trade
GRP	Government of the Republic of the Philippines
GZO	Gaston Z. Ortigas Peace Foundation
ICC	indigenous cultural community

IFMA	Industrial Forest Plantation Agreement
IP	indigenous people
IPO	indigenous people's organization
IPRA	Indigenous Peoples' Rights Act
IRR	Implementing Rules and Regulations
ISPS	indigenous socio-political systems
LGU	local government unit
MNLF	Moro National Liberation Front
MOA	memorandum of agreement
MPSA	Mining Production Sharing Agreement
MTDP	Medium-Term Development Plan
NCIP	National Commission on Indigenous Peoples
NGO	non-government organization
NIPAS	National Integrated Protected Area System
NM	national minority
ONCC	Office of Northern Cultural Communities
OSCC	Office of Southern Cultural Communities
PANAMIN	Presidential Assistance for National Minorities
PD	Presidential Decree
PNP	Philippine National Police
PO	people's organization
RA	Republic Act
SEC	Securities and Exchange Commission
SOP	standard operating procedures
SPCPD	Southern Philippines Council for Peace and Development
TRIPS	trade-related intellectual property rights
UN	United Nations
USAID	U.S. Agency for International Development
WB	World Bank
WTO	World Trade Organization

NOTES